

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 551685 and Merchant Mariner's Document 547-48-9978-D1
Issued to: Anthony L. Colla

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2372

Anthony L. Colla

This appeal has been taken in accordance with Title 46 CFR 5.30-15(a)(1).

The hearing was held on 2 May 1984 and 7 June 1984 at Baltimore, Maryland.

By order dated 7 June 1984, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, suspended Appellant's license and seaman's document upon finding proved the charge of misconduct. The specification alleges that while serving as Second Mate aboard the SS CORONADO, under authority of the document above captioned, on or about 1 April 1983, Appellant did fail to perform his duty as deck watch officer by falling asleep on the wheelhouse settee while the vessel was at anchor.

On 28 June 1984, the Appellant requested a temporary license and document pending appeal. The Administrative Law Judge denied the request by his order dated 3 July 1984.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge denying a temporary license and temporary document. It is urged that the Administrative Law Judge erred in denying a temporary license and document because:

1. the offense found proved falls within the less serious range of offenses; and
2. the true basis for the Administrative Law Judge's denial of Appellant's request is his finding that Appellant's testimony at the hearing was not credible.

OPINION

I

Appellant first contends that the offense of sleeping on watch

falls within the less serious range of offenses, arguing that, since the Administrative Law Judge issued a sanction less severe than he might have, the offense did not per se compel the judge to find that a person committing it is a danger to life and property. This argument is not persuasive.

Whether the offense of sleeping on watch is "less serious" than other, unenumerated offenses is not at issue here. At issue is the fitness of the Appellant to serve aboard a merchant vessel during the pendency of his appeal.

A request for a temporary document is governed by the provisions of 46 CFR 5.30-15:

The Administrative Law Judge or Commandant grants the request for a temporary document based on:

(1) Whether the service of the individual involved on board a vessel at the time of the request, or immediately thereafter, is compatible with the requirements for safety of life and property at sea.

(2) The individual's prior record.

The Administrative Procedure Act (5 U.S.C. 555(e)) requires a brief statement of the grounds for denial. See Appeal Decisions Nos. 2311 (STRUDWICK) and 2315 (FIFER).

In the instant case, the Administrative Law Judge considered the required factors and articulated his grounds for denial in his order. Appellant had previously received warnings from the Coast Guard in connection with five different offenses. Specifically, Appellant's record revealed that he had been warned for sleeping while on anchor watch (the same type of offense involved in this proceeding), failure to keep a radar plot in accordance with the Master's instructions, being absent from his assigned station, failure to join, and failure to follow the Master's instructions for taking anchor bearings. He had also been found guilty of an assault and battery on a crew member on another occasion.

From this, the Administrative Law Judge concluded:

It is my opinion that Mr. Colla should not be issued a temporary document in view of his poor record. The offense proved here has occurred on other occasions and I believe he is presently unfit to serve aboard a merchant vessel until the full period of outright suspension has run. Additionally, at the hearing I found his testimony not credible and, indeed, contrived to avoid the consequences of his wrongful actions. Nothing in this record reveals that he is capable or willing

at this time to conduct himself in a seamanlike manner required of a person holding his license. Accordingly, as required by 46 CFR 5.30-15, it is my opinion that Mr. Colla's service at this time under his license is not compatible with the requirements of safety of life and property at sea...

The analysis of the Administrative Law Judge is reasonable. The dangers posed by an officer or seaman willing to sleep while on watch, even while a vessel is at anchor, need little elaboration. If the anchor failed to hold, the vessel could ground or collide with other vessels. An anchored vessel could be struck by another vessel or catch fire. The individual on watch must be alert to detect such dangers and give a timely warning. The hazards posed by Appellant's irresponsibility clearly warrant the Administrative Law Judge's determination.

Although the Administrative Law Judge might have issued a more severe sanction, the fact that he did not does not, as Appellant urges, require the issuance of a temporary license and document.

II

Appellant contends that the true basis for the Administrative Law Judge's denial of this request is his finding that Appellant's testimony at the hearing was not credible. This argument is conjecture and is without merit. Appellant offers no evidence to support his contention, but merely points to the Administrative Law Judge's comment, quoted supra. However, as previously discussed, the Administrative Law Judge's denial of Appellant's request was based on Appellant's prior record and the danger posed by allowing him to serve aboard a vessel.

CONCLUSION

I find that the Administrative Law Judge properly considered the required factors prior to his denial of Appellant's request for a temporary license and document, and that his order adequately supports that denial.

ORDER

The order of the Administrative Law Judge dated 3 July 1984 denying Appellant's request for a temporary license and document is AFFIRMED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, DC this 5th day of October, 1984.